UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1870
23 October 2000

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Seventieth session

SUMMARY RECORD OF THE 1870th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday 17 October 2000, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

later: Ms. EVATT
(Vice-Chairperson)

later: Ms. MEDINA QUIROGA
(Chairperson)

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GE.00-45098 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4)

Third and fourth periodic reports of Trinidad and Tobago (CCPR/C/TTO/99/3; CCPR/C/70/L/TTO)

1. At the invitation of the Chairperson, Mr. Maharaj, Ms. Sookram, Ms. Richards, Mr. Pursglove, Ms. Sirjusingh and Ms. Boodhoo (Trinidad and Tobago) took places at the Committee table.

2. The CHAIRPERSON, welcomed the delegation of Trinidad and Tobago, and explained the procedure to be followed during the dialogue with the Committee.

3. Mr. MAHARAJ (Trinidad and Tobago) said his Government recognized that cooperation with the Committee was essential for the proper discharge of its duties under the Covenant. Over the years, Trinidad and Tobago's international reporting system had not worked well, hence the establishment following the election of a new Government in 1995 of a Human Rights Unit to ensure compliance with the State's reporting obligations. Aside from the third and fourth periodic reports to the Human Rights Committee, the Human Rights Unit had submitted reports relating to other international instruments. With the submission of its report under the Convention on the Rights of the Child it would soon be one of the few States that were up to date with their reporting obligations.

4. The report under consideration (CCPR/C/TTO/99/3) showed the great strides his country had made in promoting the principles proclaimed in the Charter of the United Nations and the rights enshrined in the Covenant. With regard to the latter, the Government had not confined its actions to Trinidad and Tobago; it had also cooperated with Governments and NGOs in the Caribbean region and throughout the world to achieve those objectives. Good examples were the regional workshops organized in his country to assist CARICOM countries with model legislation for the implementation of policies relating to the International War Crimes Tribunal and the International Criminal Court. His had been the second country in the world to ratify the statute of the International Criminal Court and the first country in the region to introduce legislation giving effect to it.

5. In 2000, Trinidad and Tobago had acceded to the Hague Convention on the civil aspects of international child abduction and had passed implementing legislation. It would shortly accede to the Convention relating to the Status of Refugees and to the Protocol relating to the Status of Refugees. Legislation had also been adopted to implement the Convention on the Rights of the Child, and thereby improve procedures for adoption, monitoring and regulating children's homes, rehabilitation centres, foster homes and nurseries, and the establishment of a Children's Authority.

6. Steps had been taken to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners through legislation introducing a system of community service orders and community mediation. As an alternative to imprisonment, the concept of community justice

had been introduced in the rehabilitation process, and community mediation centres had been set up with mediators trained and funded by the State to resolve civil and criminal conflicts. Draft legislation had also been prepared with the aim of modernizing the prison and penal system; it dealt with matters such as prison conditions, inmates' correspondence, prison visits, punishment, inspections and rehabilitation programmes. The Government was also considering the establishment of a prison inspectorate staffed by representatives of NGOs to visit prisons on a regular basis and make recommendations to the Minister of National Security.

7. Major legislative reforms included the repeal of the Legal Aid and Advice Act to increase the numbers of beneficiaries, and to extend the scope of legal aid. A Judicial Review Act had been passed in 2000 to allow NGOs and persons not directly affected by a public wrong to seek redress on behalf of poor persons. Recent legislation for the establishment of an Equal Opportunities Commission and Equal Opportunities Tribunal provided for mediation in the settlement of disputes and, if necessary, the bringing of cases before the Tribunal free of charge. A new Domestic Violence Act had been passed in order to improve social programmes and increase support and remedies available to victims. Laws dating from 1918 which discriminated against persons of the Baptist, Orisha or other non-Christian faiths were being repealed.

8. The Government's success in promoting the rights enshrined in the Covenant and in pursuing policies aimed at sustainable human development had been recognized in several reports. In UNDP's Human Development Report for 2000, Trinidad and Tobago had ranked fifth among the world's developing countries and had a better ranking than the United States and the United Kingdom in overcoming poverty. According to UNDP's Gender Empowerment Measure, Trinidad and Tobago came ahead of countries such as Singapore, Italy and Japan. Unemployment had been reduced from 17.2 per cent in 1995 to 11.7 per cent at the end of 1999. As of September 1999 the Government provided free primary and secondary education for all and subsidized education at the tertiary and professional levels. New environmental laws allowed environmental institutions to take the necessary steps to protect the environment. Again according to the Human Development Report for 2000, Trinidad and Tobago was one of the leaders in Latin America and the Caribbean in ensuring that economic prosperity meant a better standard of living for its citizens.

9. The openness, transparency and accountability of the Government had improved in the past year through the radical reform of anti-corruption and integrity laws empowering an independent commission to investigate and prosecute public officials accused of corruption. The Government was in the process of implementing a Freedom of Information Act and a Constitution (Amendment) Act. The former created a statutory right in favour of individuals to receive government-held information. The latter empowered select committees representing a broad spectrum of political opinion to monitor all State sectors and investigate alleged improper or corrupt acts.

10. Trinidad and Tobago retained the death penalty. However, the Government had recently passed a Bill in the House of Representatives dividing the offence of murder into three categories As a result, many unlawful killings would no longer be liable to the death penalty.

11. A report published recently by a government-appointed commission of inquiry comprising Commonwealth jurists and headed by Lord Mackay, the former Lord Chancellor of

the United Kingdom, stated that there was no threat to the independence of the judiciary in Trinidad and Tobago and made wide-ranging recommendations for improvements in the administration of justice. The report also documented the great progress made since 1996 in the judiciary system.

12. In a world ravaged by ethnic and religious conflicts causing flagrant violations of civil and political rights, Trinidad and Tobago stood out as a model country in which people of different race and religion lived in harmony. A sentiment of national unity fostered peace, love, tolerance and service. However, the successful management of such diversity could not have been achieved without a Government which respected civil and political rights, observed due process, provided effective redress for human rights violations and upheld the rule of law.

13. The aim of the Government was to promote poverty eradication, sustainable development, a better environment, gender equality and good governance, for it believed that development not only generated growth but also ensured a more equitable distribution of benefits and the empowerment of people. There was compelling evidence that Trinidad and Tobago had taken the lead in the region, particularly in the past five years, through its cooperation with NGOs and Governments and efforts in the the promotion of justice and peace in the region and the entire world.

14. Mr. PURSGLOVE (Trinidad and Tobago) said, with reference to question 1 of the list of issues (CCPR/C/70/L/TTO), that in its decision on Pratt and Morgan v. The Attorney General for Jamaica (1994) the Judicial Committee of the Privy Council had established a very strict time-frame for consideration of petitions from condemned prisoners to ensure that they did not spend too long on death row, which constituted cruel and unusual punishment and was in violation of article 5 of the Constitution. The Government had taken steps to ensure that at the domestic level such a time-frame was complied with through the reforms to the judicial system and the appointment of new judges. However, it had no control over the deliberations of human rights bodies, which often took several years. If that trend continued and the overall period for consideration of petitions before domestic and international bodies exceeded five years death sentences would have to be commuted to life imprisonment, thereby undermining the administration of justice. Following the response by the Human Rights Committee and the Inter-American Commission on Human Rights that it was not possible to accelerate procedures for dealing with such petitions, his Government had entered a reservation to the Optional Protocol excluding capital cases from the jurisdiction of the Committee. Subsequently, in the light of the Committee's majority decision that such a reservation was invalid, the Government had decided to denounce the Optional Protocol as a whole. By that stage it had also already denounced the Inter-American Convention on Human Rights.

15. There was some misunderstanding about the Privy Council's Thomas v. Baptise ruling to the effect that it allowed an indeterminate amount of time for human rights bodies to review petitions relating to capital cases, the interpretation being that if the human rights bodies took more than 18 months to review the petition, it no longer counted as part of the 18 months established by the Pratt and Morgan ruling. That resulted in a contradictory situation in the sense that where a prisoner was held on death row for up to two years in the domestic system it was considered cruel and unusual punishment, but the same did not hold true for delays of longer than 18 months before a human rights body. In a recent Jamaican case the Privy Council had

given a new interpretation to the Thomas v. Baptise case, effectively reapplying the Pratt and Morgan decision by stating that it had no intention of altering the overall five-year period for the review of petitions in domestic courts and before international human rights bodies. In the light of that interpretation, his Government still had a valid reason for its denunciation of the Optional Protocol.

16. Although there were no capital cases pending before the Human Rights Committee, there were approximately 45 cases before the Inter-American Commission on Human Rights, since cases rejected by the Privy Council were automatically referred to that Commission. Furthermore, while Trinidad and Tobago had denounced the Inter-American Convention on Human Rights, the Inter-American Court of Human Rights retained its jurisdiction over matters occurring before that denunciation. The average delay for the capital cases pending before the Commission was three years and there was still no sign of the Commission concluding its deliberations. In view of such considerable delays, the Government considered that there was justification for the action taken.

17. As detailed in the report, there was adequate provision for due process in the Constitution and laws of Trinidad and Tobago. No other State allowed its prisoners so many avenues of appeal or rights to bring constitutional motions against the Government. The ultimate court of appeal was the Judicial Committee of the Privy Council in England, which conferred a dimension of international jurisprudence. He did not wish to enter into a debate on the death penalty with the Committee, which did not fall within its sphere of competence. Trinidad and Tobago had not signed the Second Optional Protocol and thus there was nothing to prevent it from retaining capital punishment; however, it did strive to ensure that other relevant provisions of the Covenant relating to the death penalty were fully complied with.

18. Ms. SIRJUSINGH (Trinidad and Tobago), in reply to question 2, said that the Constitution of Trinidad and Tobago reflected many of the rights enshrined in the Covenant and expressly declared that such rights should exist without discrimination on the grounds of race, religion, sex or origin. A person alleging infringements of his constitutional rights could apply to the High Court of Justice for redress; he could also appeal to the Court of Appeal and the Judicial Committee of the Privy Council. Also, violations occurring in a tribunal or ordinary court could be referred to the High Court. A person directly or indirectly affected by the decision of an inferior court, tribunal, public body or public authority could also apply for leave to file judicial review proceedings. New legislation recently approved by Parliament set out substantive rights with respect to judicial review applications and would provide for public interest litigation. Labour disputes could be referred to the Industrial Court, which had the power of a superior court of record; there was also the right of appeal to the Court of Appeal.

19. New legislation relating to equal opportunities would provide remedies in cases of discrimination on grounds of race, religion, sex, origin, disability, marital status or ethnicity, in the fields of education, employment and the provision of goods, services or accommodation. Cases addressed to the Equal Opportunities Commission which could not be resolved through conciliation could be referred to the Equal Opportunities Tribunal, whose decisions could be appealed to the Court of Appeal. The question of gender equality was also covered by existing substantive law, including the Maternity Protection Act, the recently amended Domestic Violence Act and the Sexual Offences Act.

20. Mr. PURSGLOVE (Trinidad and Tobago), replying to question 3, admitted that in the past there had been dereliction by his country in following up the Committee's views and recommendations. Now, with the establishment of a Human Rights Unit in the Attorney-General's Office, the situation should improve and the Committee would be notified of any action taken, as appropriate. Despite such dereliction he assured the Committee that the Government had tried to bring the Committee's views to the attention of the competent bodies in Trinidad and Tobago. On occasion its findings had been considered in cases referred to the Judicial Committee of the Privy Council, particularly with respect to pre-trial delays and inhuman and degrading prison conditions. There had even been cases of sentences being commuted, resulting in payment of compensation. More often than not, however, the Privy Council would not concur with the Committee's findings. Moreover, although remedy might not be granted immediately, the circumstances of all petitioners were reviewed on a regular basis every four years by the Advisory Committee on the Power of Pardon and during each review the Committee's views were taken into consideration. In the right circumstances, its views might well tip the balance in a case, as was borne out by the release of a condemned prisoner the previous week.

21. The Attorney-General had provided information on new legislation, some of which had been instigated by the views of the Committee. His Government wanted to ensure that violations identified by the Committee in the past would not recur. It was also worth noting that to date the Government had never submitted its observations on petitions addressed to the Committee, which had therefore based its findings on the views of the petitioners only. It was to be hoped that, in future, when the Committee was able to examine the full circumstances of the cases referred to it, its findings might be different.

22. Turning to question 4, he said that there were currently 67 persons awaiting the death sentence in Trinidad and Tobago, 63 of whom were male. Ten prisoners had been executed in 1999 - the first executions to take place in five years. Since 1999, there had been no further executions on account of the Thomas v. Baptise ruling to the effect that the State could not carry out executions while petitions were pending before international human rights bodies. Owing to the number of petitions awaiting consideration by the Inter-American Commission on Human Rights, it was unlikely that there would be any more executions in the near future.

23. Ms. SIRJUSINGH (Trinidad and Tobago) said, in reply to question 5, that implemented recommendations by the Commissions advising on the Police Service included greater use of civilian staff, for instance to perform clerical duties, in order to release more trained police officers for work in the field. The management of the police had also been streamlined to ensure greater effectiveness. Clear job descriptions had been drawn up for the different posts concerned and training facilities had been improved. In response to the Scotland Yard report in 1993, a Police Complaints Authority had been set up. It was being widely used by the public to file complaints against the police, as shown by the figures for 1996 and 1997 of some 1,400 and 1,663 complaints under review respectively.

24. There had been marked improvements in various areas of police management style and practice, as recommended in the Scotland Yard report, which had led to increased public satisfaction. Police standing orders were currently under review with the aim of orienting them more towards serving the public. Written guidelines had been issued and training sessions

organized to deal with shooting incidents. The procedures for obtaining and executing search warrants were also being reviewed as well as measures for the storage and disposal of property coming into the possession of the police. Each new police station was equipped with a secure room for the storage of exhibits, and particularly drugs. One recommendation had been that an offence of conspiracy to traffic in drugs should be created. The measure already existed, however, since the Dangerous Drugs Act of 1991 prohibited the offence of trafficking and, under the Interpretation Act, conspiracy to commit that offence was included. In an effort to solve the problems plaguing the Police Service, a bipartisan committee had been set up in August 1999, consisting of the Prime Minister and the Leader of the Opposition, supported by a technical team of senior officials and former public servants. The team had been mandated to consider all the reports that had been issued, including the Scotland Yard report and the 1991 O'Dowd report, with the objective of setting up an action plan to implement their recommendations.

25. In reply to question 6, she said that the reports of the Police Complaints Authority were published and became a matter of public record. As far as the Special Reserve Police was concerned, the relevant Act had been amended to include the Special Reserve and Municipal Police in the definition of police officers. The amendment also provided for disciplinary action in respect of police officers, as determined by the Commissioner of Police.

26. Mr. PURSGLOVE (Trinidad and Tobago) said in reply to question 7 that the system of corporal punishment in his country was an inheritance from colonial times. The Government was currently reviewing some of its provisions as part of its action to implement the Convention on the Rights of the Child. Corporal punishment for persons under 18 had been abolished. The Law Commission was currently reviewing the position in regard to persons over that age. Currently, corporal punishment was available as a penalty but it was optional save in the case of rape with aggravating circumstances where, under the Sexual Offences Act, it was mandatory. There had been no floggings since 1999. Whippings could still be ordered under the law, and some did actually take place but only after appeal procedures had been completed. The Government was currently awaiting the recommendations of the Law Commission.

27. Ms. SIRJUSINGH (Trinidad and Tobago) said in reply to question 8 that the Judges' Rules and Administration Directions referred to were not rules of law but rules of practice given the force of law by judges. In the case of the Privy Council, the Judicial Committee had decided that the Constitution could be looked to in order to interpret the Judges' Rules. Those Rules must be read, therefore, in conjunction with the Constitution, which set out the substantive law regarding the rights of persons in detention. There were also certain procedural guarantees consistent with the provisions of article 9 of the Covenant. For example, cruel and unusual punishment was prohibited. The Judges' Rules complied with the rights set out in articles 7 to 9 of the Covenant insofar as they ensured that, on being arrested by a police officer, a person undergoing interrogation would be afforded certain basic rights and treated with a measure of dignity. For example, the Rules provided that, at any stage of an investigation, a person should be entitled to consult a lawyer in private and to be given notice of the offence with which he was charged. All answers to interrogation must be voluntary. There were also other administrative guidelines, including the Police Standing Orders whereby police officers were required to keep a pocket diary recording all actions taken while on duty, and each division was required to keep a police station diary, noting times of arrest and so forth, all of which information could be used in evidence by the courts in order to ensure that the rights of detainees were observed.

28. Mr. PURSGLOVE (Trinidad and Tobago) said that his country, like many other countries, was faced with an increase in the prison population. A new maximum security prison was being constructed to provide modern accommodation for an eventual 2,100 inmates. The facility was being opened in stages and 794 prisoners had so far been transferred from other prisons to the new premises. Similar transfers would take place until the prison was fully operational and the target figure of 2,100 achieved. The Government was currently considering penal reform as a whole and the Law Commission had prepared a paper in that connection. Action had already been taken by the Government to reduce the prison population by introducing non-custodial sentencing. The regulations currently being drafted would be in conformity with the Standard Minimum Rules for the Treatment of Prisoners. The Law Commission's recommendations were now with the Government, which would act upon them in the near future.

29. Ms. SIRJUSINGH (Trinidad and Tobago) said in reply to question 10 that it was acknowledged in her country's report that the Judicial Committee of the Privy Council had recognized that the Constitution of Trinidad and Tobago did not guarantee the right to a speedy trial. However, procedures were still available whereby a person could ask the trial judge for a stay of proceedings on the grounds that the delay might have prejudiced his case, and the judge would have the power to order a stay if he could not counteract the effect of the delay by directions to the jury. The Government was now committed to ensuring speedy trials and the recent reforms had resulted in an increase of pace. Cases were now able to be listed for trial in the High Court within one to one and a half years of the date of commission of the offence, which was a substantial improvement. In the "Annual Report of the Judiciary", which had been made available to the Committee, it was noted that, of the 22 capital appeals heard, 14 had been determined within 12 months of the date of conviction. Speed had also been enhanced by certain administrative measures. Financial resources had been provided to increase the number of High Court judges and judges of the courts of appeal, as well as for the Office of the Director of Public Prosecutions and relevant support staff. Other measures to enhance the speed of trials included infrastructural improvements such as the refurbishment of court premises and the provision of computer facilities. The criminal courts were now sitting in vacation time, thus avoiding any hiatus in proceedings.

30. In reply to question 11, she said that the draft charter of patients' rights was now included in the Health Services Quality Bill, due to be enacted in the near future. The draft charter met the requirements of articles 10 and 14 of the Covenant, including access to medical records, access to care, respect for the patient's dignity, privacy, and so on. It did not include some of the specific rights set out in those articles because many of them were upheld by other legislation. Under the new policy, accused juveniles were segregated from adults and accused adults were segregated from convicted adults, in accordance with the provisions of article 10. As far as the right of review was concerned, a tribunal had been set up to which application could be made for discharge. The patient or his relatives could attend all the meetings of the tribunal and all related information must be made available to them. There was also a psychiatric hospital tribunal, and the cases of persons hospitalized for over one year, pursuant to an order of the court or the Ministry of National Security, must be reviewed annually. If the provisions of the Mental Health Act were violated, application could be made to the High Court. Persons detained without due process could also complain to the Ombudsman for investigation and recommendations. The

Ombudsman had the power to enter and inspect premises and to refer any breach of duty to the competent authority. The Law Commission had recently issued a paper on improving the effectiveness of the Ombudsman and legislation was being drafted to that end.

31. Mr. PURSGLOVE (Trinidad and Tobago) said, in response to question 12, that legal aid to cover most of the rights under the Covenant was generally available. In criminal proceedings, aid was available for all indictable offences and for all offences under summary jurisdiction, the only exception being motor vehicle offences. Any doubt as to whether legal aid was available was always decided in favour of the accused. Application could be made for legal aid either directly through the court or by visiting the Legal Aid Office. If the accused was in custody, he could be visited by an officer of the Legal Aid Authority. A new Legal Aid and Advice Act had been passed, under which a system of duty attorneys was being organized. In the magistrates' courts, a legal aid officer would be present to assist any persons not having made previous arrangements.

32. Legal aid was now being decentralized to make it more accessible to the population at large. Under the new Act, the net had been widened so that more people could qualify for aid and the fees payable to legal aid attorneys had been increased, thus making it more attractive for experienced lawyers to take on such cases. The annual subvention by the Government had increased from $2,269,000 in 1998-1999 to $3.5 million in 1999-2000. As to the numbers of applications granted or refused, in criminal cases in 1999 563 applications had been received and only 15 refused. In civil cases, 521 applications had been received and 37 refused, probably as the result of the means test imposed.

33. The CHAIRPERSON thanked the members of the delegation for their statements and responses. She invited the members of the Committee to put any further questions they might have regarding the replies to questions 1 to 12.

34. Mrs. GAITAN DE POMBO said that she had been particularly gratified to learn of the many links forged by Trinidad and Tobago with other international bodies, in particular the inter-American human rights system.

35. As far as penal reform was concerned, the Government was clearly doing its utmost to ensure that trials were fair and expeditious. Nevertheless, the Committee still needed more specific information. In the response to question 3, it had been stated that a new unit had been set up to provide follow-up to the Committee's Views. She would like more information, however, regarding the replies still outstanding on 8 of the 12 cases in which violations had been found to have occurred. She had also found the response to question 7 unsatisfactory. Had any deadline been set for the removal of sentences of flogging from the statute book? She noted that the whipping of children under the age of 12 was still permissible, which was directly counter to the Convention on the Rights of the Child as well as article 7 of the Covenant. She noted that paragraph 104 of the report referred to the existence in Trinidad and Tobago of a National Committee for the Abolition of the Death Penalty and a very active chapter of Amnesty International. She asked what policy was envisaged to allow those organizations to work in complete independence.

36. Mr. SCHEININ said that the country had set a good example in the field of the promotion and protection of human rights, established a truly multicultural society and, not least, played a positive role in international relations, in parti-ular through its speedy ratification of the statute of the International Criminal Court. Nevertheless, some questions remained. The varying decisions of the Judicial Committee of the Privy Council had put the country in a problematic situation: it would seem, unfortunately, that the Council's position had led to speedier executions. The Committee had never taken the position that mere length of time amounted to cruel and inhuman treatment in the absence of other factors. He asked whether Trinidad and Tobago might in the future consider reacceding to the Optional Protocol without reservation.

37. After hearing the answer to question 3, his question was what was the Government doing to make the public and the various branches of Government aware that the rule of law included compliance with international obligations as well as with the national Constitution.

38. In relation to question 4, he noted that there were said to be plans to expand the list of crimes subject to capital punishment. While he understood that those States which had not ratified the second Optional Protocol were not immediately obligated to abolish capital punishment, there was nevertheless a clear programmatic obligation to work to that end. Were there in fact plans to broaden the list of crimes subject to the death penalty? On the other hand, there seemed to be a trend in the opposite direction, one more in compliance with article 6 of the Covenant, whereby different classes were to be established for the crime of murder. He asked when the legislation referred to was expected to enter into force.

39. In regard to question 7, he noted that corporal punishment of minors had already been abolished. Article 7, however, prohibited all forms of corporal punishment. He asked whether the abolition in regard to minors related to judicial forms of punishment only, and whether other institutions still applied corporal punishment. He also asked whether it was true that medical professionals were involved in meting out sentences of flogging and whipping. That would seem to constitute an unacceptable contradiction between the duty of the medical profession and the requirements of the legal regime. Lastly, he understood that the law on flogging applied only to males. There were, however, reports of one female having been sentenced to corporal punishment. How had that issue been resolved?

40. In regard to question 10, he noted from paragraph 146 of the report that a person apprehended should be brought before a magistrate "as soon as practicable". The information in paragraph 190 seemed somewhat different. In the Committee's experience of dealing with death penalty cases from Trinidad and Tobago, it often proved difficult to get at the facts of the case if there had been a delay in initiating the judicial proceedings. It was particularly difficult for an international body to deal with matters of that kind after a long delay and to identify violations in the early stages of proceedings, such as the alleged use of force during police custody. He asked what the practice was in fact in serious criminal cases and how soon a prisoner was brought before a judicial authority. It had been alleged that there were instances of corruption and collusion between magistrates and the police. In that case, of course, it was even more difficult to establish the facts of a case.

41. In regard to question 12, he asked from what phase of the proceedings legal aid was available to persons suspected of a serious crime. The Committee's position was axiomatic:

in all capital punishment cases, a lawyer should be provided at all stages of the proceedings. It was an obligation of the State to ensure that in capital cases no one was unrepresented at any stage. He would also like to know how legal aid attorneys were paid, whether in a lump sum by case, or by the hour or day. The Committee had seen cases from various countries in which the author of an individual communication claimed that his lawyer had not been properly paid. Either payment might not reflect actual hours of work or a lawyer might be more concerned with speed than with making a full defence of his client.

42. Mr. WIERUSZEWSKI said he was impressed by the amount of material the delegation had provided to supplement the reports. He nevertheless felt bound to point out that the submission of those reports four years late constituted an infringement of the country's obligations under the Covenant, and created serious problems for the Committee. He was pleased to hear that steps had been taken to avoid a recurrence of that situation in future.

43. In the light of the tribute paid to the role of Amnesty International in paragraph 104 of the report, he was somewhat puzzled by the harsh criticism of that organization made by the Attorney-General in a recent statement to the House of Representatives. The NGO made a valuable contribution to the work of the Committee, as well as assisting victims of human rights violations.

44. He too would appreciate more detailed answers to question 3, and hoped that in future the country would be able to reaccede to the Optional Protocol. Concerning question 4, he had been pleased to learn that a reclassification of serious crimes was being contemplated and would be glad to know to what extent it would lead to a reduction in the number of crimes subject to the death penalty. Was it also intended to remove the mandatory nature of that penalty, in view of the fact that under article 14, paragraph 5, of the Covenant everyone had a right to have his conviction and sentence reviewed by a higher tribunal? A mandatory death penalty not only infringed that article, but also raised certain issues under article 6. Were there any plans to introduce the death penalty for crimes such as rape or drug trafficking?

45. While he was pleased to learn that it was intended to expand the system of legal aid and to improve its effectiveness, he would like to know whether that improvement would extend to constitutional actions. Were any changes to the current system for the granting of pardons being contemplated? Lastly, turning to question 7, he asked whether the new bill on sexual offences was to retain the provision whereby 20 strokes could be administered as an additional punishment.

46. Mr. YALDEN said he had been particularly impressed by the volume of reference material. Other countries could well follow the State party's example in that regard.

47. He had noted that there was no independent human rights commission in Trinidad and Tobago. Was it the view of the Government that either the Ombudsman, or the Ombudsman in conjunction with the Equal Opportunities Commission, adequately covered all the rights guaranteed by the Covenant in both the private and public sectors, and ensured effective remedies in case of violation? Paragraph 110 of the report stated that the Complaints Division was responsible for investigating complaints made by members of the public against the police. He feared that any such system was bound to be less credible than an independent investigatory

body. The statistics given in paragraph 114 showed that out of 1,206 complaints received, only 13 had been referred for disciplinary action. Such figures for investigations of police behaviour carried out by the police themselves could not but give rise to scepticism. He would suggest that attention be paid to that issue.

48. He had been pleased to hear that an investigatory commission had found no cause to believe that any attempt had been made to undermine the independence of the judiciary, and would be glad if copies of the commission's report could be made available.

49. He asked whether the delegation could provide statistics concerning the number of prisoners subjected to corporal punishment. If young persons under the age of 18 were no longer to be subject to such punishment, did it follow that the last two sentences of paragraph 106 of the report no longer applied?

50. Ms. Evatt (Vice-Chairperson) took the Chair.

51. Mr. SOLARI YRIGOYEN commended the report, which although late was detailed and extensive. Nevertheless, certain aspects of the human rights situation still gave cause for concern, in particular the application of the death penalty in contravention of article 6 of the Covenant. He noted that in a recent case, a condemned man had been hanged despite the submission at the last minute of evidence which, according to his lawyers, proved his innocence. He would like to know what would happen when such cases arose in the future.

52. Concerning article 7 of the Covenant, he noted from paragraph 106 of the report that the punishment of flogging was widely applied. He was concerned that the delegation had not yet given a clear answer to question 7 of the list of issues. He would also appreciate clarification concerning the case of a journalist, David Rodriguez, who had been severely beaten by police officers. What were the conclusions of the commission of inquiry, and what punishments had been imposed? In the case of the three men shot by police on 5 August 1997, had those responsible been identified and punished? In conclusion, he was concerned about the situation of human rights bodies such as Amnesty International, which had been harshly condemned in the House of Representatives.

53. Ms. Medina Quroga resumed the Chair.

54. Mr. KLEIN said he was glad that the Committee was now able to resume its long-interrupted dialogue with the State party. While it was regrettable that Trinidad and Tobago should have denounced the Optional Protocol, he wished to emphasize that that denunciation did not change a single letter of its obligations under the Covenant.

55. Listening to the answers given to question 3, he had had the impression that the delegation was the victim of a basic misunderstanding in arguing that it would undermine the domestic legal order for decisions of international bodies to be implemented after the domestic courts had found there was no violation. In fact, the purpose of such bodies was to secure respect for human rights, on the basis of the experience that domestic law was not sufficient to guarantee them. International human rights protection by its very nature implied that there could be differences between the legal order at home and the requirements of international law.

56. That being so, he would like to know what was the real impact of the Covenant in the country. Paragraph 106 of the report did not convey any sense of the problems presented by the continued existence of corporal punishment. It had been stated that the Law Commission was reviewing the matter, but 22 years after ratification of the Covenant nothing seemed to have changed.

57. Concerning article 10, the Committee had received information suggesting that prison conditions were far below international minimum standards. It had been reported that overcrowding was endemic, sanitation was poor and medical treatment was lacking. Such conditions in fact constituted an aggravation of the punishment provided for by law.

58. Similarly, while he noted that many laws concerning the protection of children had been adopted, he was concerned at reports of the terrible conditions prevailing in children's institutions. Was article 24 of the Covenant a dead letter as far as the State party was concerned? Lastly, referring to paragraph 211 of the report, he would like to know whether there were any exceptions to the prohibition of abortion, for example if the life and health of the mother were at stake or if the pregnancy was the consequence of rape.

59. Lord COLVILLE expressed appreciation for the large volume of background documentation provided to the Committee. He was sure that the next report would give details of the many steps taken to bring the situation in the country in line with the Covenant's requirements, not only in terms of legislation but also in terms of practical effects.

60. Concerning questions 5, 7 and 8 of the list of issues, he congratulated the Government on the amending legislation it had introduced to rectify certain shortcomings of the Police Complaints Authority. However, the second report by that Authority seemed to indicate that there had not yet been any change of culture within the police service. To judge from the figures, many problems had not been resolved, and there had been numerous complaints by the public of failure by the police to carry out their duties, to investigate, and to appear in court when needed for a prosecution. What was the current situation regarding such complaints, particularly concerning harassment and battery by the police? And had there been any improvement in the performance of the Complaints Division in dealing with them?

61. The second Scotland Yard report had suggested that some aspects of the United Kingdom's Police and Criminal Evidence Act might serve as a useful model for Trinidad and Tobago. In that connection, he was interested to hear that diaries were now being kept by police stations and individual police officers. If they corresponded to the so-called custody record in the United Kingdom, such documents were extremely useful, provided that they were conscientiously kept and contained all relevant material. Defence lawyers could consult them to retrace events during the early stages of police custody, for instance to determine exactly how long individual police officers had spent with an arrested person. If a complaint was filed regarding the admissibility of a confession, the custody record constituted an invaluable source of evidence for investigators and the judiciary. He asked whether any other steps had been taken to introduce reforms based on the United Kingdom Act.

62. Ms. CHANET expressed regret at the denunciation by Trinidad and Tobago of the Optional Protocol, especially in view of the country's aspiration to play a leading role as a champion of human rights in the region. She hoped it would review its position in the near future and, at any rate, refrain from making its domestic legislation on the death penalty more stringent, a step that would be incompatible with the provisions of article 6 of the Covenant.

63. With regard to the communications that were still pending, she felt that the delegation's response had been too general and had failed to address all outstanding cases.

64. Paragraph 137 of the report listed a large number of cases in which a police officer was authorized by law to arrest a person without a warrant. Drawing attention to article 9, paragraph 1, of the Covenant, which prohibited arbitrary arrest, she observed that many of the cases listed were unduly vague and that the arresting officer was given a large measure of discretion. There was thus appreciable scope for subjective and arbitrary conduct, especially in the light of existing concerns regarding police culture. She wished to know what steps were taken to prevent arbitrary arrest under such circumstances.

65. According to paragraph 139 of the report, an arrested person had a right to counsel unless the exercise of that right would hinder the process of investigation. Stressing that counsel was perfectly entitled to interfere in the process of investigation, she asked how much was again left in such circumstances to the discretion of police officers. She associated herself with the questions asked by other members about corporal punishment and with Lord Colville's question about ill-treatment.

66. Mr. AMOR expressed appreciation of the progress made by Trinidad and Tobago in the area of human rights. He associated himself with the questions by other members about corporal punishment, abortion and the lack of safeguards for arrested persons.

67. According to paragraph 78 of the report, the courts had the power to declare null and void any act of Parliament that violated the human rights provisions of the Constitution. He wished to know which courts possessed that authority and whether the legislation was abrogated or no longer applied in practice. How many acts had been declared null and void on such grounds?

68. According to paragraph 81, an act of Parliament was needed to incorporate international law provisions in domestic legislation. Had that process been completed for all international human rights treaties ratified by Trinidad and Tobago, even in cases where the provisions ran counter to existing domestic legislation?

69. He gathered from paragraph 127 of the report that persons could be held in solitary confinement without such minimum guarantees as a maximum period of confinement. He asked whether there were any rules governing the placing of persons in solitary confinement or whether it was left to the discretion of the authorities involved.

70. Paragraph 151 concerning deprivation of liberty for immigration control made no mention of the length of time for which a person could be held for an inquiry or for deportation. The failure to set a time limit for such custody would constitute a breach of the Covenant.

71. Lastly, he noted that some of the exceptions listed in paragraph 172 to the principle that inability to fulfil a contractual obligation should not be punishable by imprisonment seemed to be incompatible with article 11 of the Covenant.

72. Ms. EVATT, while welcoming the progress made by Trinidad and Tobago in the area of human rights, deplored the removal from international review of cases in which it was imperative to ensure that the death sentence was not carried out in violation of the Covenant.

73. She shared Mr. Scheinin's interest in the new proposals to categorize the crime of murder. If the new legislation came into force, would a mechanism be established to review current convictions and to reclassify those already sentenced? She was interested in hearing, for example, what would happen in the case of Indravani Pamela Ramjattan, who had been sentenced to death for murdering her partner, by whom she had been physically and sexually abused for many years. Would the death sentence still be mandatory for such cases?

74. She asked whether legal aid was available both for review of cases under the Constitution and for appeals to the Privy Council. The Committee had been informed that such procedures depended on *pro bono* work by lawyers.

75. She was not fully satisfied with the delegation's reply to question 7 of the list of issues. Article 7 precluded the imposition of penalties such as flogging on the grounds that they constituted cruel, inhuman and degrading forms of punishment. Was it true that a bill drafted in 1999 extended those penalties in cases of rape? She wished to know whether the State party would consider ceasing such practices completely pending their removal from the statute book. She had information to the effect that, in the case of Edward Boucher, the sentence of birching had been carried out in 1998 before completion of the appeal proceedings and that Myra Bhagwansingh had been sentenced to flogging with a cat-o'-nine-tails in February 1996 although corporal punishment was, in principle, applicable only to male offenders. What was the position of the judicial authorities on those two cases?

76. Given the buoyant economy mentioned in paragraph 13 of the report, Trinidad and Tobago had no excuse for failing to improve prison conditions. She welcomed the building of a new prison and hoped that it would lead to the closure of outdated facilities. Referring to reports of restrictions on visits by children to their mothers in prison, she inquired about the rules governing prison visits and the procedures for their enforcement. She also wished to know what steps had been taken to enable prisoners to file complaints.

77. Referring to a report that retarded young men were kept naked in locked cages in the boys' ward at St. Ann's Psychiatric Hospital in Port of Spain, she asked what action had been taken to end such practices, which were totally contrary to the principle of humane treatment of persons in detention. What provision would be made under the new procedures to ensure that such cases were brought to the attention of the authorities and that action was taken without delay?

78. She shared the concerns of other members about the punishment of women under criminal law for seeking an abortion.

79. Mr. HENKIN said he had been struck by Mr. Klein's reminder of the nature of international legal obligations and their relationship to domestic law. Twenty-five years after the entry into force of the Covenant, it was still necessary to remind States parties that they had accepted derogations from sovereignty and were thus required to adopt international standards as the minimum standards for local legislation. He hoped that Trinidad and Tobago would take the lead in showing what it meant to become a party to an international human rights system in terms of revision of domestic law.

80. He joined other members of the Committee in urging the State party to abolish the death penalty, even though that was not strictly required by article 6 of the Covenant. He wished to know what stage had been reached in the enactment of the bill to reclassify the crime of murder, how many crimes would remain subject to capital punishment and whether such punishment would be mandatory, in which case it would be contrary to the Covenant. Would the convictions of the 67 persons still on death row be reviewed in the light of the new act or even in advance of its enactment in cases where execution of the death penalty was imminent?

81. As corporal punishment was a violation of the Covenant, he asked whether there had been any attempt to significantly reduce its application.

82. He hoped that Trinidad and Tobago would take steps to shed its reputation as the only State party to have denounced the Optional Protocol, and that it would lead the countries of its region and beyond in prompt reporting, paying full attention to Covenant principles and compliance with international human rights treaties.

83. Mr. MAHARAJ (Trinidad and Tobago) said that his country recognized the Committee's authority to make recommendations on what it believed to be infringements of the Covenant and the Government had therefore abolished corporal punishment for persons under the age of 18. However, under article 40 of the Covenant, States parties had the sovereign power to accept or reject such recommendations and neither the courts nor the Judicial Committee of the Privy Council had ruled that corporal punishment was unconstitutional in the case of adults. Countries had to consider their own crime situation and the prevalence of particular offences. In a society where serious offences such as rape occurred repeatedly, the stability of a Government could be undermined if it attempted to transplant the legal culture of European or other countries. The Law Commission, a body that reviewed legislation and discussed possible changes with the public, was looking at the issue of corporal punishment and would submit a report to the Attorney-General within the next nine months.

84. With regard to the death penalty, Trinidad and Tobago had made every effort to persuade the Committee and the Inter-American Commission on Human Rights to have capital cases determined within a particular time frame. As no progress had been made in that regard, it had been left with no alternative, in the public interest of the country, but to enter a reservation to the Optional Protocol in respect of capital cases. It had then taken the further step, prompted by the Committee's decision in the case of *Rawle Kennedy v. Trinidad and Tobago*, of denouncing the Protocol. He stressed that, in so doing, Trinidad and Tobago did not consider that it was relieved of its obligations under the Covenant. He submitted that the provisions for due process in capital

cases were more generous than in the United States and other countries where the death penalty still existed. A conviction could be reviewed right up to Privy Council level and a constitutional motion could be referred three or four times to the Judicial Committee of the Privy Council.

85. With regard to legal aid, millions of dollars were paid to British lawyers to appear before the Judicial Committee of the Privy Council on behalf of accused persons in capital cases.

86. In response to a trend in public opinion, the Government had been asked to consider whether to extend the death penalty to other offences. The Law Commission had submitted a report and the Government had decided against any extension.

87. The Offences against the Person (Amendment) Bill had been passed by the House of Representatives, would be debated by the Senate in two days' time and would become law by the end of that week. The public had initially objected to the legislation but had eventually been won over. The act would not have retrospective effect since that would be unconstitutional. However, in the case of Indravani Pamela Ramjattan, for example, the Judicial Committee of the Privy Council had sent the matter back to the Court of Appeal, which had substituted manslaughter for the initial conviction. It thus no longer entailed capital punishment.

88. The countries of the Caribbean region had concluded that international law permitted countries to carry out the death penalty and it had emerged from meetings of the attorneys-general of the region that the death penalty was unlikely to be abolished during the next four years. They agreed, however, that strong safeguards should be applied in implementing the existing legislation. For example, condemned prisoners in Trinidad and Tobago were taking advantage of a new legal provision under the Criminal Procedure Act whereby a court could be asked to consider new evidence even when all proceedings in a capital case had been completed.

The meeting rose at 1 p.m.